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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Application of California-American Water Company (U 210 W) to Decrease Revenues for Water Service in its Coronado District by (\$73,100) or (0.46%) in 2008 and Increase Revenues by \$266,200 or 1.67% in 2009 and \$260,900 or 1.61% in 2010 | A.07-01-036 |
| Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Larkfield District by \$1,272,000 or 61.91% in 2008, \$134,300 or 3.94% in 2009 and \$129,900 or 3.67% in 2010 Under the Current Rate Design or Decrease Revenues by (\$742,200) or (36.12%) in 2008 and Increase Revenues by \$50,000 or 3.72% in 2009 and \$63,500 or 4.55% in 2010 Under the Proposed Rate Design | A.07-01-037 |
| Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Sacramento District by \$8,966,900 or 33.89% in 2008, \$1,905,700 or 5.36% in 2009, and \$1,860,700 or 4.97% in 2010 Under the Current Rate Design or by \$10,981,000 or 41.50% in 2008, \$1,925,900 or 5.11% in 2009, and \$1,845,600 or 4.66% in 2010 Under the Proposed Rate Design | A.07-01-038 |
| Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Village District by \$1,537,300 or 7.43% in 2008, \$243,400 or 1.08% in 2009, and \$232,900 or 1.02% in 2010 | A.07-01-039 |

**CALIFORNIA-AMERICAN WATER COMPANY'S
MOTION TO STRIKE THE DOCUMENT SERVED BY
THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE**

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May 17, 2007

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THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE**

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), California-American Water Company ("California American Water") hereby submits this motion requesting that the Administrative Law Judge strike the document titled *Testimony of the Mark West Area Community Services Committee* ("MWACSC"), served on Friday, May 4, 2007 ("MWACSC Document"). As demonstrated below, the MWACSC Document should not be admitted into evidence because it is not testimony that can be subject to cross examination. Moreover, even if the MWACSC Document were to be considered testimony, it should be stricken because it is improper, in direct

contravention to the Commission rules, and goes beyond the scope of California American Water's rate case request in this proceeding.

Not only does MWACSC fail to provide a sponsoring witness that will be subject to cross-examination, but the MWACSC Document asks questions instead of providing evidence, is full of vague and conclusory statements with no factual evidence to support MWACSC's claims, and contains hearsay and other irrelevant testimony. Furthermore, the MWACSC Document discloses the substance of settlement negotiations between the Division of Ratepayer Advocates ("DRA"), California American Water and MWACSC in this proceeding, a serious violation the Commission's Rules of Practice and Procedure. Accordingly, California American Water moves to have this document stricken in its entirety. In the event the Motion to Strike is rejected in full or in part, California American Water requests that MWACSC be directed to identify the individual(s) who will sponsor testimony and be subject cross-examination at the evidentiary hearing scheduled to begin on June 4, 2007 and provide credentials and background information for the individual(s) by Friday, May 25, 2007.

I. MWACSC'S DOCUMENT IS NOT TRULY TESTIMONY.

A. MWACSC Provides No Witness to Cross-Examine

The Assigned Commissioner's and Administrative Law Judge's Scoping Memo and Ruling, issued on May 11, 2007, ("Scoping Memo") specifically directed the parties to serve direct testimony on or before May 4, 2007.¹ The MWACSC Document, however, fails to identify the witness or witnesses who prepared the Document and will be available for cross-examination. MWACSC did not include any information on the credentials or specific expertise of the person or persons who prepared the Document.² Without a sponsoring witness or

¹ Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, p. 4.

² Notably, in summarizing the nature of its Document, MWACSC itself concedes that its so-called "testimony" would more appropriately be considered "Comments." MWACSC Document, p. 3 (stating that "[u]nderstanding that such an analysis would ordinarily be treated as 'Public Comment' the Committee desires that this analysis be

(continued...)

witnesses, the MWACSC Document cannot be considered testimony and should be stricken. In the event that California American Water's Motion to Strike is rejected in full or in part, MWACSC should be directed to identify the individual(s) who will sponsor the testimony and be subject cross-examination at the evidentiary hearing scheduled to begin on June 4, 2007 and provide credentials and background information for the individual(s) by Friday, May 25, 2007.

B. MWACSC's Questions Are Not Testimony

MWACSC submitted a document consisting of questions regarding the proceeding, rather than direct testimony with facts and evidence supporting its position. The MWACSC Document is replete with questions regarding California American Water's general rate case that should have been addressed through the discovery process. Such questions do not constitute direct testimony.

For example, Chapter 1 of the MWACSC Document consists of a series of questions about California American Water's Special Requests, including nine questions about Special Request No. 1 and twelve questions about Special Request No. 3,³ and a set of generalizations that there are "many unanswered questions in the Special Requests" that will not be answered in the proceeding.⁴ Similarly, Chapter 3 of the MWACSC Document contains 63 questions about California American Water's proposed projects, as well as a litany of additional items that MWACSC believes to be missing from the application.

Had MWACSC sought such information through data requests, California American Water would have gladly provided information regarding California American Water's proposed Special Requests to MWACSC. MWACSC had ample opportunity in this

(...continued)

treated as testimony and served on all parties to the rate case.").

³ MWACSC Document, pp. 5, 6.

⁴ MWACSC Document, p. 4.

proceeding to conduct discovery, and in fact, it issued data requests and received information in response to its data requests. The fact that MWACSC chose not to request such information through data requests does not change the fact that the MWACSC Document is not the proper forum to obtain information regarding Applicant's case. California American Water therefore urges that the Administrative Law Judge strike the MWACSC Document because it does nothing more than raise questions that could easily have been resolved had MWACSC propounded discovery.

II. EVEN IF THE MWACSC DOCUMENT IS CONSIDERED TESTIMONY, IT IS IMPROPER AND SHOULD BE STRICKEN

A. MWACSC Violated the Commission's Rules by Disclosing in Its Testimony Confidential Information Obtained through Settlement Negotiations.

MWACSC egregiously violated the Commission's Rules of Practice and Procedure by disclosing the substance of the settlement negotiations between DRA, California American Water and MWACSC in this proceeding. California law is clear that settlement communications are inadmissible evidence based upon the strong public policy in favor of settlement discussions and the integral role that confidentiality plays in the settlement process. Rule 12.6 of the Commission's Rules of Practice and Procedure expressly provides that:

No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties and their representatives shall hold such discussions, admissions, concessions, and offers to settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations. (emphasis added to original)

Similarly, the California rules of evidence strictly prohibit the introduction of evidence concerning a party's communications made in connection with a settlement negotiation. (*See* Evid. Code § 1119.) California American Water recognizes that the "technical rules of evidence

ordinarily need not be applied in hearings before the Commission” but the “substantial rights of the parties shall be preserved.” (Rule 13.6.)

Pursuant to Assigned Administrative Law Judge’s directive to the parties to meet prior to the submission of DRA and intervenor testimony,⁵ representatives for California American Water, DRA and MWACSC met on Tuesday, April 24, 2007 for settlement negotiations regarding the Larkfield and Sacramento Districts.⁶ At the beginning of the meeting, counsel for California American Water stated that all matters discussed at the meeting were confidential pursuant to Rule 12.6 of the Commission’s Rules of Practice and Procedure. Despite the fact that two representatives from MWACSC attended the negotiations and agreed that all settlement communications are confidential and not to be used for any purpose other than settlement, MWACSC flagrantly violates the Commission’s rules and discloses confidential settlement communications in its Document.

MWACSC’s blatant disregard for the Commission’s rules governing the confidential treatment of settlement negotiations runs throughout its testimony. For example, on page 15, MWACSC absurdly and wrongly claims that information discussed at the April 24, 2007 meeting regarding customer projections shows that California American Water intentionally misled Commission staff and intervenors. This testimony offends the very purpose of settlement negotiations and should be stricken.

Additionally, on page 24, MWACSC specifically references comments made by Mr. Thomas Glover, California American Water’s General Manager for the Northern Division, at the April 24th settlement meeting regarding growth projections. MWACSC claims that California American Water’s confidential settlement communications, which will never be part of the record, allegedly show that California American Water’s Comprehensive Planning Study

⁵ RT (Prehearing Conference, March 23, 2007), p. 6:22-23; p. 7:16-17.

⁶ California American Water and DRA also met on Wednesday, April 25, 2007 to discuss potential settlement relating to California American Water’s Village and Coronado Districts.

is incorrect. On page 33, MWACSC again references the confidential settlement negotiations regarding the water supply issues regarding the Faught Road Well. MWACSC's failure to provide citations to California American Water's direct testimony further compounds this problem, making it nearly impossible to determine the source of MWACSC's contentions and whether such contentions are based upon admissible evidence.

Similarly, MWACSC's attempt to introduce information and documents produced during negotiations between Sonoma County Water Agency and California American Water is wholly improper. MWACSC contends that a draft agreement, appended to its Document, demonstrates that California American Water has no need to develop new sources of water supply for its Larkfield District. However, as MWACSC acknowledges, Sonoma County Water Agency and California American Water have not yet reached an agreement, and therefore a so-called draft agreement between the parties cannot be used as evidence in this proceeding. While California American Water continues to negotiate in good faith with Sonoma County Water Agency, MWACSC's attempt to introduce a document that is part of confidential negotiations is improper. The Commission should strike this portion of the Document as well as the so-called draft agreement MWACSC appended to the Document.

The disclosure of confidential settlement negotiations raises grave concerns about the credibility of the MWACSC Document and brings into question MWACSC's motive in this proceeding. In addition to striking the MWACSC Document in its entirety, and to avoid further harm, California American Water requests that the Administrative Law Judge instruct MWACSC and its representatives not to introduce, mention or refer to any evidence obtained as a result of California American Water's participation in settlement discussions in any matters pertinent to this proceeding, including the substance of the parties' negotiations and any other oral or written settlement communications. (*See* Rule 12.6.)

B. MWACSC Addresses Issues That are Outside the Scope or Irrelevant.

In its Document, MWACSC addresses issues that outside the scope or are no longer relevant to the proceeding, including: (1) issues that have been withdrawn from California American Water's rate request, (2) issues that were settled in California American Water's prior general rate case (A.04-04-040, A.04-04-041, A.04-08-013); and (3) attempts to introduce significant new evidence into the record that is unrelated to California American Water's general rate request.

First, the MWACSC Document regarding the Sutter Well and Well #6 is no longer relevant given that California American Water has withdrawn these two projects from its request.⁷ California American Water explained in supplemental testimony that the Sutter Well project is no longer needed because the Sutter Medical Center (a new medical facility) will not be developed and that California American Water determined that Well #6 is no longer necessary due to revised growth predictions for the Larkfield Area. Therefore, the sections in the MWACSC Document (e.g., pp. 12, 15) discussing the Sutter Well and Well #6 projects are not responsive to California American Water's rate request, are beyond the scope of the proceeding, and confuse the pertinent issues in the proceeding, and thus should be stricken.

Second, the settlement agreement adopted in the prior general rate case (A.04-04-040, A.04-04-041, A.04-08-013), which the parties voluntarily accepted, has no relevance to California American Water's request in this proceeding and is not binding upon the Commission in this proceeding. Thus, MWACSC's repeated contentions that the adopted settlement somehow precludes California American Water from seeking approval of additional capital project costs have no merit. (*See* MWACSC Document, p. 26 (claiming that the settlement agreement in the prior rate case precludes California American Water from requesting additional

⁷ In the Supplemental Direct Testimony of Rodney L. Jordan and the Direct Testimony of Thomas Glover, served on April 20, 2007, California American Water withdrew its request for the Sutter Well and Well #6 projects. California American Water has only withdrawn its request for the well, and the requested treatment station will be developed.

funds for an arsenic treatment facility).) Similarly, MWACSC's attempt to re-litigate the prior general rate case by entering evidence that was part of that proceeding should be excluded from consideration. (See MWACSC Document, Exhibit E (correspondence from August 2005 in the prior rate case regarding "will serve" letters in the Larkfield District).) Such information is outdated and no longer relevant.

Third, the portions of the MWACSC Document regarding public acquisition are irrelevant and address issues outside the scope of the proceeding. MWACSC appends a lengthy document to its testimony ("Preliminary Engineering Feasibility Study") in a back-door attempt to enter evidence into the record regarding the potential condemnation of California American Water's water system in the Mark West Area, which is not an issue in this proceeding. The Preliminary Engineering Feasibility Study, over 70 pages in length, provides a detailed assessment of a community services district's ability to acquire California American Water's water system through eminent domain. This document regarding public acquisition of the Mark West Area has no relevance to this case.

C. MWACSC's Document is Vague and Conclusory

MWACSC's claims regarding California American Water's water supply needs are vague and conclusory, self-serving and unsupported by fact. MWACSC makes general statements with no shred of factual support about California American Water's current water demand and the projected growth of the Larkfield District. No facts or evidence are presented to support MWACSC's claims that California American Water will have sufficient water to meet current customer demands and that California American Water can eliminate the need for any new sources of water (except for replacement wells needed to maintain current production rates). Similarly, MWACSC's speculation regarding the effect of California American Water's conservation program on the company's need to construct new wells is meaningless rhetoric without any supporting facts. For example, MWACSC claims (p. 36) that the Faught Road Well

is not needed because “[c]onservation can, over time, provide more ‘redundancy’ to the system than can be provided by the Faught Road Well.” Without any actual evidence that California American Water’s conservation program will yield the necessary results, MWACSC claims that the Faught Road Well can be removed in its entirety (pp. 38-39). The Commission cannot admit into evidence data that is speculative or conjectural. Without a showing of facts to support its conclusory statements, the MWACSC Document should be stricken.

Additionally, MWACSC’s claim that the North Wikiup Tank No. 2 may fail in a seismic event is not supported by factual evidence and is highly speculative. MWACSC’s conclusory statements regarding the safety of North Wikiup Tank No. 2, as well as Exhibit C, which includes selected pages from a 2006 Geotechnical Report, should not be admitted into the evidentiary record. MWACSC’s testimony regarding California American Water’s Larkfield WTP Site Drainage Improvements is similarly meaningless and has no factual or legitimate evidentiary support (pp. 40-41). It is unfair to require California American Water to respond to such vagaries.

D. The MWACSC Document Contains Unsubstantiated Hearsay.

Many of MWACSC’s assertions regarding the Faught Road Well are supported only by hearsay statements by third parties (developers), which remain unidentified by name. MWACSC claims that a developer of the Faught Road Subdivision stated that he and two other developers (p. 34) “were being required to pay for drilling a test well and would be required to pay for drilling the production well.” Without any supporting evidence, MWACSC also claims that the developer of the Faught Road project is still in the permitting stage with construction (p. 38). As now set forth in MWACSC’s testimony, much of the asserted “evidence” regarding the Faught Road Well is not based on MWACSC’s first-hand knowledge and as a result cannot be subjected to meaningful cross-examination. Such “testimony” would swiftly be stricken in any court of law, and should be stricken here.

III. NEED FOR PROMPT ACTION ON THIS MOTION TO STRIKE

California American Water seeks prompt action on this motion because, should the Administrative Law Judge fail to act on this Motion to Strike or deny the Motion to Strike, California American Water will be compelled to address the MWACSC Document in its rebuttal testimony, due on May 21, 2007. The Administrative Law Judge should act promptly on this motion to provide guidance to the parties to this proceeding. Moreover, the ruling on this motion will impact preparations for the evidentiary hearing, scheduled to begin in approximately two weeks.

IV. CONCLUSION

For all of the foregoing reasons, California American Water requests that the Administrative Law Judge strike the MWACSC Document in its entirety, and instruct MWACSC and its representatives not to introduce, mention or refer to any evidence obtained as a result of the settlement discussions in this proceeding for any purpose other than settlement. In the event the Motion to Strike is rejected in full or in part, California American Water requests that the Administrative Law Judge direct MWACSC to identify the witness or witnesses who will sponsor the MWACSC Document and be subject to cross-examination at the upcoming evidentiary hearing and provide credentials and qualifications for the witness or witnesses.

Dated: May 17, 2007

Respectfully submitted,

By: /s/ Lori Anne Dolqueist

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PROOF OF SERVICE

I, Cinthia A. Velez, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is STEEFEL, LEVITT & WEISS, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. On May 17, 2007, I served the within:

***California-American Water Company's
Motion to Strike the Document Served by
The Mark West Area Community Services Committee***

on the interested parties in this action addressed as follows:

See attached service list



(BY E-MAIL SERVICE) By transmitting such document(s) electronically from Steefel, Levitt & Weiss, San Francisco, California, to the electronic mail addresses listed above. I am readily familiar with the practices of Steefel, Levitt & Weiss for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 1.10 of the Public Utilities Commission of the State of California and all protocols described therein.



(BY MAIL) By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Steefel, Levitt & Weiss, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Steefel, Levitt & Weiss for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 17, 2007, at San Francisco, California.

/s/ Cinthia A. Velez

Cinthia A. Velez

SERVICE LIST
A. 07-01-036, A. 07-01-037, A. 07-01-038, A. 07-01-039
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